In the Supreme Court of the United States

OCTOBER TERM, 1951

No. 336

ANTHONY P. GIESSLER, PETITIONER

v.

THE UNITED STATES

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF CLAIMS

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

The Government respectfully calls to the attention of the Court the following facts which suggest that the petition was filed out of time:

The judgment of the Court of Claims was entered on May 1, 1951. On June 15, 1951, petitioner filed a motion to "reopen the case under authority of Rule 54 (6) Court of Claims to consider plaintiff's assignment of error as shown in attached brief, and to certify the case to the Supreme Court under the provisions of Rule 40 of said Court for final decision." The Government opposed petitioner's motion on the merits, and on the ground that it was not timely filed

within 30 days from the entry of judgment as provided in Rule 53 (c) of the Rules of the Court of Claims. On July 9, 1951, the court below overruled petitioner's motion without more. The petition for a writ of certiorari was filed on September 18, 1951.

Since the petition was filed more than 90 days after the entry of final judgment, it is apparent that the petition was not filed within the time specified by 28 U. S. C. 2101 (c) unless the motion filed on June 15 tolled the running of the statutory period. If that motion be deemed a motion for a new trial, it was not timely filed under Rule 53 (c) of the Rules of the Court of Claims which provides that "a motion for a rehearing or a motion to alter or amend a judgment or a motion to grant a new trial shall be filed not later than 30 days after the entry of the judgment." Where such untimely motions are denied without more, it is well established that the running of the statutory period for the filing of a petition is not suspended. Cf. *United States* v. *Seminole Nation,* 299 U. S. 417, 421, and cases there cited. The same result obtains if petitioner's motion be considered a request for relief from the judgment under Rule 54 (b) (6) of the Rules of the Court of Claims.[1] Since that Rule provides that "a motion under this subdivision (b) does not affect

[1] Rule 54 (b) (6) is derived from Rule 60 (b) (6) of the Rules of Federal Procedure. See p. xii of the Rules of the Court of Claims.

the finality of a judgment or suspend its operation," the running of the 90-day period for filing a petition was not affected by the motion. Cf. *Dept. of Banking* v. *Pink,* 317 U. S. 264, rehearing denied, 318 U. S. 802.

It is respectfully suggested, therefore, that the petition should be denied on this ground.[2]

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OCTOBER 1951.

[2] Should this Court be of the opinion that the petition was timely filed, it is respectfully submitted that the petition presents no novel or important questions warranting further review. Petitioner's arguments on the merits are fully answered in the opinion of the court below.

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